



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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DIVISION OF ENFORCEMENT

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February 7, 2020

Via ECF

Hon. Kiyo A. Matsumoto
United States District Court
Eastern District of New York
225 Cadman Plaza East, Room S905
Brooklyn, NY 11201

Re: *SEC v. Shkreli*, 15-cv-7175 (KAM) (E.D.N.Y.)

Dear Judge Matsumoto:

Plaintiff Securities and Exchange Commission (“Commission”) and defendants Martin Shkreli, Evan Greebel, MSMB Capital Management LLC (“MSMB Adviser”), and MSMB Healthcare Management LLC (“MSMB Healthcare Adviser”) respectfully submit this status update pursuant to the Court’s February 3, 2020 Scheduling Order.

The Commission’s complaint

The Commission’s complaint alleges that Shkreli is liable for violations of Sections 17(a)(1) and 17(a)(2) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rules 10b-5 and 10b-21 thereunder, and Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) and Rule 206(4)-8 thereunder. In addition, the complaint alleges MSMB Adviser is liable for violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, that MSMB Healthcare Adviser is liable for violations of Sections 206(1) and 206(2) of the Advisers Act, and that Shkreli is liable for aiding and abetting MSMB Adviser’s and MSMB Healthcare Adviser’s violations. Finally, the complaint alleges that Greebel is liable for aiding and abetting Shkreli’s violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

As relief, the Commission is seeking injunctions against future violations of the securities laws, disgorgement of ill-gotten gains plus prejudgment interest thereon, and civil monetary penalties pursuant to Section 20(d) of the Securities Act, Section 21(d)(3) of the Exchange Act, and Section 209(e) of the Advisers Act. In addition, the Commission is seeking an officer-and-director bar against Shkreli pursuant to Section 20(e) of the Securities Act and Section 21(d)(2)

of the Exchange Act, and an officer-and-director bar against Greebel pursuant to Section 21(d)(2) of the Exchange Act.¹

Status as to Shkreli, MSMB Adviser, and MSMB Healthcare Adviser

The Commission has engaged in good faith discussions with counsel for Shkreli, MSMB Adviser, and MSMB Healthcare Adviser concerning a potential consensual resolution of all of the claims in this action, without the need for litigation, in light of the resolution of the criminal charges in *United States v. Shkreli*, 15-cr-637 (KAM) (E.D.N.Y.). Counsel for these defendants has indicated that communications with Shkreli are complicated by his incarceration in Allenwood, PA, which has suspended visiting until further notice. Legal calls with Shkreli can be arranged at the request of counsel, and the staff at Allenwood works hard to accommodate requests for legal calls. However, there have been a number of times, through no fault of Shkreli or his counsel, when the staff at Allenwood has not been able to schedule a call. The Commission and these defendants respectfully propose to report-back to the Court in 30 days as to the status of those discussions, or sooner if the parties reach an agreement in principle on terms that the Commission staff is willing to recommend to the Commission for authorization. While the Commission staff can engage in settlement discussions, no settlement is final unless and until it is authorized by the Commission.

Status as to Greebel

The Commission has similarly engaged in good faith discussions with counsel for Greebel concerning a potential consensual resolution of the claims in this action. The Commission and Greebel therefore also respectfully propose to report-back to the Court in 30 days as to the status of those discussions, or sooner if the parties reach an agreement in principle on terms that the Commission staff is willing to recommend to the Commission for authorization.

Respectfully submitted,

Paul G. Gizioni

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Securities and Exchange Commission

¹ In the criminal action, *United States v. Shkreli*, 15-cr-637 (KAM) (E.D.N.Y.), Shkreli was convicted on two counts of substantive securities fraud in violation of Exchange Act Section 10(b) and Rule 10b-5 and one count of conspiracy to commit securities fraud, while Greebel was convicted of one count of conspiracy to commit securities fraud. The Second Circuit affirmed the convictions, and the Supreme Court denied Shkreli's petition for certiorari. Greebel has until February 20, 2020 to petition for certiorari.

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